



STATE OF INDIANA

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November 26, 2012

Mr. David Paul Allen
5930 Hohman Avenue, Suite 204
Hammond, Indiana 46320

Re: Formal Complaint 12-FC-323; Alleged Violation of the Access to Public Records Act by the East Chicago Police Department

Dear Mr. Allen:

This advisory opinion is in response to your formal complaint alleging the East Chicago Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your formal complaint to the Department on October 30, 2012, to which the Department was invited to respond no later than November 22, 2012. As of today's date, we have yet to receive any response from the Department.

BACKGROUND

In your formal complaint, you provide that on October 16, 2012, you submitted a written request for records via certified mail to the Department for a copy of "each East Chicago City Court Information dated from November 1, 2011 through the present which is signed by Officer Hector Rosario and/or which identifies him as a witness in any of the following offense categories: Operating While Intoxicated; Operating with at Least .15 Grams; or Operating with at Least .08 but less than .15 Grams." You further advised that in lieu of the information requested, your request would be satisfied with a list of names and case number of the individuals and cases within the parameters of your APRA request. The certified mail receipt provides that the Department received your request on October 17, 2012. As of October 30, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have yet to receive any response from the Department to your request.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA.

See I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Again, section 9(b) requires that the agency respond within seven (7) days of the receipt of the request; not seven (7) days from when the request was mailed. A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c).

Without the benefit of a response from the Department to your original request for records or formal complaint, it is unclear to me why your request was denied. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. *See* I.C. §§ 5-14-3-1, 5-14-3-9(f), (g). Exceptions to disclosure are narrowly construed. *See* I.C. § 5-14-3-1. As the Department has failed to respond in any fashion to your original request for records or your formal complaint filed with the Public Access Counselor's Office, it is my opinion that the Department has violated the APRA in response to your request.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department violated the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: East Chicago Police Department